

THE FRENCH LAW OF COLLECTIVE LABOR AGREEMENTS

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THE reported decisions of the French courts in cases involving collective labor agreements¹ display a unique handling of this modern industrial phenomenon. Even prior to the Act of March 25, 1919,² which prescribed the legal treatment of such agreements, the cases reveal a fairly consistent, logical theory of their nature and effects. There were no such chaos and uncertainty as prevail in this country.³ On the other hand, even the Act of 1919 has not accorded collective agreements a central place in industrial control such as they have occupied in Germany since 1918.⁴ They have simply been given a fair field in which to operate in the fixing of wages and working conditions. The courts have stood ready to enforce their provisions wherever the affected individuals have not manifested dissent; but the formal privilege of individuals to escape from their control and to determine employment conditions by individual contract has been safeguarded by courts and legislature alike.

It is largely in petty litigation that the legal enforcement of collective labor agreements is sought and resisted in the courts of France. In a suit for wages the plaintiff may seek to collect according to the scale which has been incorporated into a collec-

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¹ A collective labor agreement may be concluded under varying circumstances, depending upon the number of employers and workers involved and the manner of their organization and representation. There may be only a single employer and an informal group of workers, or there may be one or more legally-constituted associations on each side. The agreement which they make may be designed to fix wages and working conditions, to provide an established method of settling future differences between employers and employees, or both. Compare Hamilton, *Collective Bargaining* (1930) 3 *ENCYCLOPÆDIA OF THE SOCIAL SCIENCES* 628. The same writer's article on *Collectivism*, *id.* at 633, discusses the general antithesis between that theory and individualism, one aspect of which is illustrated by the problem discussed in the following pages. The writer is also indebted to an article by Gaëtan Pirou, *The Theory of the Collective Labor Contract in France* (1922) 5 *INT. LAB. REV.* 35, in which many of the points herein treated are suggested.

² *Code du travail* (Labor Code), bk. I, §§ 31, 31a-31x, 32.

³ Rice, *Collective Labor Agreements in American Law* (1931) 44 *HARV. L. REV.* 572; Fuchs, *Collective Labor Agreements in American Law* (1924) 10 *ST. LOUIS L. REV.* 1.

⁴ Fuchs, *Collective Labor Agreements in German Law* (1929) 15 *ST. LOUIS L. REV.* 1.

tive agreement.⁵ Again a few francs damages may be sought on account of the plaintiff's summary discharge by the defendant in the face of a collective agreement which was supposed to assure a week's notice.⁶ Frequently a union files an action for damages alleged to have been caused to the organization or its members by an employer's violation of a collective agreement.⁷ Occasionally an employer sues a union on account of its alleged breach of agreement in calling a strike.⁸ But usually the amounts sought are small; and the judgments rendered frequently are little more than judicial slaps on the wrist. Rarely are the courts called upon, as in Germany,⁹ to determine controversies involving important matters of industrial statecraft.¹⁰

No doubt the pettiness of French collective agreement litigation is partly the result of the limited scope and unstable character of French labor organization. French unionism from the beginning, as represented by the national federations, has been revolutionary in nature and divided against itself along doctrinal lines. Its central organizations have been indisposed to foster such instruments of compromise with capitalism as collective agreements.¹¹ Employers thus have been strengthened in their reluctance to deal with the unions, and the government has not seen fit to permit the labor organizations to share in controlling employment relations nearly as fully as in Germany.¹² Moreover, French workers themselves have not been bound to the unions by firm ties. Dues have been small and delinquencies in their payment the rule rather than the exception.¹³ The prevailing form of organization appears to be that of local craft unions joined into regional unions along industrial lines.¹⁴ These, finally, are federated nationally.¹⁵ Membership in the principal federated

⁵ Seine, Cons. de Prud'hommes, Nov. 13, 1920, *infra* note 100.

⁶ Cour de Cassation, Chambre Civile (hereinafter cited Cass. Civ.), Jan. 15, 1918, DALLOZ, RECEUIL PÉRIODIQUE DE JURISPRUDENCE, (hereinafter cited D.) (1918) part I, at 17.

⁷ Cass. Civ. Jun. 18, 1923, D. 1927, I, 87.

⁸ Chambéry Oct. 4, 1910, *infra* note 74.

⁹ Fuchs, *op. cit. supra* note 4, at 7, 15, 17-18, 20-21, 39-40.

¹⁰ But see Cour de Cassation, Chambre des Requêtes (hereinafter cited Cass. Req.), Jan. 25, 1905, *infra* note 42; Lyon, Mar. 10, 1908, *infra* note 106.

¹¹ MARJORIE RUTH CLARK, A HISTORY OF THE FRENCH LABOR MOVEMENT (1910-1928) (1930) gives an account of the history and attitudes of French unionism. French employers' organization is much more complete but is lacking in unity. Its central organization is merely a coordinating body; and French employers have not yet accepted the principle of collective bargaining with labor unions. See *Employers' Organizations in Franco* (1927) 16 INT. LAB. REV. 50.

¹² Fuchs, *op. cit. supra* note 4, at 10, 38-39.

¹³ CLARK, *op. cit. supra* note 11, at 27, 28.

¹⁴ *Id.* at 29

¹⁵ Since 1921, following nearly twenty years of formal union in one or-

unions has fluctuated widely.¹⁶ In 1927 it was claimed to be 1,118,256¹⁷ out of a total working population in commerce and industry except agriculture of 8,000,000.¹⁸ Only recently has there been a strong tendency toward stable, responsible unionism.¹⁹

In collective bargaining the local and regional unions are the chief negotiating and contracting units.²⁰ A considerable proportion of collective labor agreements, however, continues to be made by temporary, informal associations or committees of workers whose authority seldom comprises more than a very small area.²¹ The subject matter of most collective agreements, furthermore, although it is becoming somewhat broader,²² has on the whole been quite limited.²³ It is, therefore, with relatively small con-

ganization, there have been two important national confederations of labor in France: the older, more conservative *Confédération Général du Travail* (C. G. T.) and the *Confédération Général du Travail unitaire* (C. G. T. U.), the latter of which is affiliated with the Third, or communist, International. *Id.* at 110-111.

¹⁶ Statistics of French union membership are exceedingly unreliable. The Minister of Labor reported 1,181,297 industrial and commercial and 1,583,247 agricultural unionists, federated and unfederated, as of Jan. 1, 1926. BULL. MIN. DU TRAV. (1928) at 420, 423. The corresponding figures for the year preceding, based upon corrections in the figures for Jan. 1, 1920, were, respectively, 1,846,047 and 1,222,534. *Id.* (1925) at 289. The foregoing figures include only the membership of unions registered under the Act of March 21, 1884, although unregistered unions have been legal since the Act of July 1, 1901, § 2, BULL. DES LOIS, v. 382, at 1273. It is impossible to determine what proportion of the total number of unionists belongs to the confederated unions, the value of whose own estimates is discussed in the following footnote.

¹⁷ CLARK, *op. cit. supra* note 11, at 122, 143. These estimates, which are for the C. G. T. and the C. G. T. U., are notoriously exaggerated. One-half the cited figure probably would be nearer to the truth. *Id.* at 121-122. There is also a Christian union movement which claimed a membership of 120,000 in 1925. INT. LAB. OFF., FREEDOM OF ASSOCIATION, v. II (Studies and Reports, Ser. A, No. 29) at 115.

¹⁸ Tardy, *Le règlement amiable des conflits collectifs de travail* (1929) 138 REV. POL. ET PARL. 445.

¹⁹ CLARK, *op. cit. supra* note 11, cc. VIII, IX. At the same time the C. G. T. U. has grown until now it seems to be equal to the C. G. T. in strength. Tardy, *op. cit. supra* note 18, at 443.

²⁰ OUALID ET PICQUENARD, SALAIRES ET TARIFS, 277-279. There have been a few agreements on a national scale, formed under the impetus given to collective bargaining by war-time and immediate post-war conditions. *Id.* at 492.

²¹ The exact proportion of such agreements is not determinable. The BULLETIN DU MINISTRE DU TRAVAIL gives annual figures of collective labor agreements reported to the Minister of Labor, which are by no means all that actually are concluded. In 1927 and 1928, out of 157 agreements so reported, only 100 were stated to have been entered into by permanent unions.

²² OUALID ET PICQUENARD, *op. cit. supra* note 20, at 495 *et seq.*

²³ Before the war the collective agreement "was limited, in general, to

troversies that these agreements have busied the courts.

The importance to Americans of the French judicial treatment of collective labor agreements is, however, not lessened by the comparative pettiness of the controversies. Not only is unionism in the United States possibly as weak as in France, although for quite different reasons, but identical principles of law and politics have restrained the growth of collective control in both countries. If in France, therefore, a well-defined though subordinate place has been accorded to collective agreements in controlling employment relations, and if French students of law and of labor recognize in them an essential basis of future development, the significance for the United States of the relevant French law is increased rather than diminished.

I. Individualism v. Collectivism

In France as in the United States the doctrine of the freedom of the individual has formed the core of a great part of constitutional law.²⁴ In the Declaration of the Rights of Man of 1789 it was proclaimed:

"The purpose of all political association is the preservation of the natural and inalienable rights of man. These rights are liberty, property, security, and resistance to oppression. . . . Liberty consists in being able to do all that does not injure another; hence the existence of the natural rights of each individual has no limits except such as assure to the other members of society the enjoyment of these same rights. . . ." ²⁵

Nor was individual freedom to be safeguarded only against op-

registering the narrow and temporary agreement upon the points which had given rise to the difference [settled by the agreement], leaving in obscurity all the other clauses capable of constituting a local, regional, or general law of the trade. It contained scarcely any provisions designed to avoid conflicts by prescribing in advance a procedure of conciliation or arbitration." *Id.* at 278.

²⁴ It will be appreciated, of course, that the French courts have no power to declare legislation invalid because it is in conflict with the constitution. Lambert, Pic, and Garraud, *The Sources and the Interpretation of Labour Law in France* (1926) 14 INT. LAB. REV. 19. Nevertheless the accepted views of constitutional law are a powerful influence upon legislators and serve as guides to the courts in their interpretation of statutes. They have an even more inviolate sanctity in the eyes of those whose economic interests they serve.

²⁵ DECLARATION OF THE RIGHTS OF MAN (1789) art. I. §§ 2, 4. This declaration and that of 1793, which are regarded as the cornerstones of French constitutional law, are not formally written into or recognized by the still-existing Constitution of 1875; but they are looked upon as controlling. ESMEIN, *ÉLÉMENTS DE DROIT CONSTITUTIONNEL* (8th ed. 1927) 599; 3 DUGUIT, *TRAITÉ DE DROIT CONSTITUTIONNEL* (3d ed. 1930) 605-611; Bonnecase, note in SIREY, *RECUEIL GÉNÉRAL DES LOIS ET DES ARRÊTS* (hereinafter cited S.), 1920, part I, at 17-20.

pression by the state. It must be protected also from infringement by associations of all kinds, which were considered to be prone to tyrannize over members and non-members and even to challenge the authority of the state itself. It followed logically that to afford the greatest possible protection against usurpers of this sort their existence must be prohibited entirely. Hence economic associations were forbidden by legislation in 1791,²⁶ and other associations in 1834.²⁷ Thus the individual and the state became the only legally recognized entities for controlling employment relations. The one exercised his control by making contracts; the other might legislate if it saw fit.²⁸ Their exclusive régime endured for over three-quarters of a century.²⁹

When in 1884, after a long struggle, the legality of trade associations and unions of employers and employees was established,³⁰ the legislature was in theory effecting an extension of individual freedom. Whatever may have been the intention of those who for years had been defying the law in order to escape from the inadequacy of the individual labor contract,³¹ the new Act was proposed in order to enable the individual to express himself more fully than before by joining with others in economic organizations. It was not to be thought of, therefore, that these organizations should be permitted to exercise coercive power or authority of any sort. It is fundamental, said the ministerial sponsor of the Act, that "The right of a worker who does not want to become party to an association is equal to the right of 10,000 workers who wish to make him a party."³² Consequently, although the offense of attempting "to restrict the free exercise of labor and industry by means of fines, prohibitions, proscriptions, and combined interdictions"³³ was abolished,³⁴ it remains an offense, punishable by imprisonment of six days to three years and/or a fine of sixteen to 3000 francs, "by means of violence,

²⁶ BRÊTHE, DE LA NATURE JURIDIQUE DE LA CONVENTION COLLECTIVE DE TRAVAIL (1921) 1; INTERNATIONAL LABOUR OFFICE, *op. cit. supra* note 17, at 88.

²⁷ INTERNATIONAL LABOUR OFFICE, *op. cit. supra* note 17, at 91.

²⁸ LeChapelier, the author of the Act of 1791, gave it as his view that "free agreements between individual and individual must fix the day's work for each worker." *Id.* at 89. Duguit, interpreting the ideas of the legislature of 1791, states the matter thus: "Man is not truly free unless he remains isolated and independent, placed at once under the protection and the exclusive power of the state." *Op. cit. supra* note 25, v. 5, at 182.

²⁹ INTERNATIONAL LABOUR OFFICE, *op. cit. supra* note 17, at 87.

³⁰ By § 2 of the Act of Mar. 21, 1884, now incorporated in LABOR CODE, bk. 3, § 2.

³¹ INTERNATIONAL LABOUR OFFICE, *op. cit. supra* note 17, at 93-99.

³² Waldeck-Rousseau, quoted in MORIN, LA RÉVOLTE DES FAITS CONTRE LE CODE (1920) 35.

³³ INTERNATIONAL LABOUR OFFICE, *op. cit. supra* note 17, at 97.

³⁴ ACT of Mar. 21, 1884, § 1. BULL. DES LOIS, v. 313, at 617.

assaults, intimidation, or fraudulent action to bring about or maintain or attempt to bring about or maintain a concerted cessation of work for the purpose of forcing the raising or lowering of wages or of infringing upon the free exercise of labor or industry."³⁵ Moreover, an extensive body of law relating to "abuse of right" has been constructed upon two sections of the Civil Code.³⁶ Hence strikes, lockouts, blacklists, picketing, and the like, which are made legal by the Act of 1884,³⁷ may, if they cause injury, become torts. They cannot always be torts even when they cause damage, since they have been legalized. Hence they are held to be wrongful when engaged in for improper purposes. The courts, of course, pass upon the legitimacy of the purposes of concerted action.³⁸ The sole guide for their decisions, except such as they have chosen to set up for themselves, has been the statutory definition of the object of trade associations and unions as the study and furtherance of economic interests.³⁹

Individual employers and workers in France, therefore, remain free to govern their relations to each other by any sort of contract they choose. Other employers and workers are free to form associations and unions and to engage in concerted activity for the purposes sanctioned in the statute. If this concerted activity injures a non-union worker by bringing about his discharge, or an employer by driving away prospective customers, it is a question for litigation whether the association is guilty of "abuse of right" or whether the victim has suffered *damnum absque injuria*. A demonstrated improper motive may determine the question against the association.⁴⁰ In its absence, the court which has

³⁵ PENAL CODE, § 414. Criminal statutes of general application prohibit violence and intimidation, but the punishments prescribed are less drastic and the definition of intimidation is more narrowly restricted than in the section quoted. INTERNATIONAL LABOUR OFFICE, *op. cit. supra* note 17, at 171-175.

³⁶ §§ 1382, 1383. "Any act whatsoever of an individual which causes injury to another obliges the party responsible for its occurrence to make reparation." "Everyone is responsible for damage which he has caused, not only by his willful act, but also by his negligence or imprudence."

³⁷ LABOR CODE, bk. 3, § 1: "Trade associations shall have as their sole object the study and furtherance of economic, industrial, commercial, and agricultural interests." § 24 authorizes the associations to act together for the same purposes.

³⁸ The history of the doctrine of "*abus de droit*" and analyses of its results in various fields of litigation are contained in notes by G. Appert and E. Naquet, appended to the reports of decisions in S. 1904, II, 217, and S. 1912, II, 97. The identity of the questions thus arising with those which have troubled Anglo-American courts in tort law, the law of conspiracy as applied to labor, etc., is obvious. See FRANKFURTER AND GREENE, *THE LABOR INJUNCTION* (1930) 24-46; 7 LABATT, *LAW OF MASTER AND SERVANT* (1913) §§ 2660-2662.

³⁹ *Supra* note 37.

⁴⁰ Cass. Civ. Mar. 20, 1929, Bull. Cass. Civ. 1929, at 126. The action was

the point to decide is pulled in one direction by the absolute right of the individual to contract ⁴¹ and in the other by the unqualified privilege of the association to further the economic interests of itself and its members.⁴²

The necessity for distinguishing between individual and collective interests has also arisen in the determination of the right of trade associations to sue in tort. That right was accorded by the Trade Association Act of 1884.⁴³ In the construction of the statute the right was, however, limited to the institution of such suits as contributed to the attainment of the statutory purposes of such associations. Hence it became necessary in each case to determine whether the plaintiff actually was attempting to vindicate an "economic interest" which it was its mission to "study and further."⁴⁴ Furthermore the collective interest of an association was distinguished from the individual interests of its members, and it was held that only the protection of the former might be made the object of a suit by the association. It was recognized that a collective interest might be damaged by injuries to individual interests, as in cases of wage cutting or of discharges of union members. An effort was made, however, to distinguish between "direct" and "indirect" injuries of this sort. Only the former might be redressed in actions by the association. After nearly thirty years of conflicting decisions, some of which were more liberal than others in recognizing collective interests and direct injuries to them,⁴⁵ the liberal trend definitely prevailed in 1913 through a decision of the united chambers of the Court

against an employer for wrongful discharge. It was held that the lower court should have admitted testimony in behalf of the plaintiff that the defendant's sole reason for discharging him was his membership in a union. The principle is the same as in actions against associations. See case cited *infra* note 41.

⁴¹ Cass. Civ. Jun. 22, 1892, S. 1893, I, 41.

⁴² Cass. Req. Jan. 25, 1905, D. 1905, I, 153, S. 1906, I, 209, in which the purpose of the defendant union in continuing to carry on a strike was to force the plaintiff to enter into a collective agreement which provided for conciliation of future disputes.

⁴³ § 6, BULL. DES LOIS, v. 313, at 618.

⁴⁴ *Supra* note 37.

⁴⁵ The decisions of the criminal chamber of the Court of Cassation were especially conservative in cases of intervention by associations in criminal prosecutions under §§ 63-70 of the CODE OF CRIMINAL PROCEDURE (*Code d'instruction criminelle*) for the purpose of collecting damages from traders or employers who were guilty of illegal practices. The civil chambers, on the other hand, were inclined to be more liberal in the ordinary civil actions which came before them. The various lower courts were similarly divided. It was suggested that some of the conflict might be explained by recognizing that an association might sue to prevent injuries for which it could not afterward collect damages. See the note of M. Henri Capitant, D. 1909, II, 34, in which the distinction is criticized. The earlier cases are reviewed in the report of M. le conseiller Falcimaigne to the Court in the case next cited.

of Cassation.⁴⁶ The case involved an intervention by the National Association for the Protection of French Wine Culture in a prosecution⁴⁷ of a merchant who had diluted wine with water. The Rouen Court of Appeals awarded 2000 francs damages to the intervenor on account of the injury to the reputation of French wine and of the tendency to lower prices which resulted from the defendant's fraud. The criminal chamber of the Court of Cassation having reversed and remanded the case, the court of appeals persisted in its judgment. It was sustained on the second appeal.⁴⁸

The tendency which prevailed in the foregoing decision was strengthened by the Act of March 12, 1920, supplementing the Act of 1884, in which it was provided that trade associations and unions might sue on account of "acts causing a *direct or indirect* injury to the collective interest of the trade which they represent."⁴⁹ Even the criminal chamber has now gone far in recognizing collective interests and direct injuries to them. Thus a national federation of building workers has been held to be entitled to institute a prosecution and to endeavor to collect damages from a contractor with the government during the war, upon the ground that he had reflected upon the collective patriotism of the building workers by representing to the government that he was paying them higher wages than they were receiving or had demanded.⁵⁰ Similarly, an employer who violates the weekly day-of-rest statute may have to answer not only to the government but also to a labor union on account of the added trouble to which the union is put in defending its members' rights.⁵¹

In discussing the foregoing classes of cases French theorists have not been content to argue simply with regard to the usefulness of tort actions by associations in the enforcement of the law governing business conduct. It has, it is true, been recognized as a practical matter that if there is to be a civil action against a merchant who adulterates his product, a single competitor can scarcely show sufficient direct injury to entitle him to bring it.⁵² It has also been pointed out that individual workers are not likely

⁴⁶ Cass. R  un. Apr. 5, 1913, D. 1914, I, 65, S. 1920, I, 49.

⁴⁷ See *supra* note 45.

⁴⁸ Perroud, *The Organization of the Courts and the Judicial Bench in France* (1929) 11 J. COMP. LEGIS. (3d ser.) 10-11, contains a good account of the appellate procedure involved in this case.

⁴⁹ LABOR CODE, bk. 3, § 11. The same Act extended similar powers to federations of associations, which theretofore had not enjoyed the right to sue. *Id.* bk. 3, §§ 24, 26.

⁵⁰ Cass. Crim. Jun. 8, 1923, D. 1923, I, 201.

⁵¹ Cass. Crim. Mar. 14, 1924, DALLOZ, RECUEIL HEBDOMADAIRE DE JURISPRUDENCE (hereinafter cited D. H.) (1924) 263. The court below had awarded 200 francs damages.

⁵² Note of M. Achille Mestre, S. 1920, I, 49.

to incur the disfavor of employers by suing them for infractions of the law and that such violations must be redressed by the unions if civil remedies are to be invoked at all.⁵³ But advocates of a broad right of associations to sue have, in addition, argued upon the basis of a "collective personality," a metaphysical entity whose existence, interests, and powers are entitled to judicial recognition.⁵⁴ It has been contended on the other side that such an entity does not exist; that there is no collective interest which is different from the sum of the interests of individuals; and that hence, except as regards suits over their property, associations should not be permitted to sue unless the members individually have that right.⁵⁵ Thus the solution of a specific practical problem has been regarded as a phase of a larger battle between two abstractions. Victory for the collectivist side was hailed with considerable fervor.⁵⁶

II. Theories of Collective Agreements

French theories of the legal nature of collective labor agreements can only be understood in relation to the clash between individualistic and collectivistic views of the control of employment relations. To some writers, these relations must be explained in

⁵³ Note by M. Capitant, *supra* note 45.

⁵⁴ In the report to the Court of Cassation, *supra* note 45, the purpose of the French parliament in enacting the Act of 1884 was interpreted to have been "to re-establish the corporate association, . . . of which one of the consequences was this: between the interest of society in general, the protection of which continued to be in sole charge of the public minister, and the interest of the individual, the defense of which belongs to each citizen, the law recognized the existence on an intermediate plane of a new general interest, less extensive than the former, more extensive than the latter, and which is the general or collective interest of a given profession viewed as a whole and considered as an abstraction from the persons who compose it. To this new interest the law has given an agency of protection, which is the association, an intangible being separate from the physical persons who create it by their union. . . . The collective interest . . . is one and indivisible, it appertains to the trade as personified in the association. . . ."

⁵⁵ M. J. A. Roux in a note in S. 1908, I, 107, while admitting that it is possible to conceive of entrusting the defense of the reputation of a trade to an association, insists that under the Act of 1884, "In uniting and in associating, merchants, industrialists, or agriculturalists are only able to unite what they possess themselves, by way of rights as of property, and the individual right remains the substratum which is necessary for the action instituted by an association. That is to say, the right of action of an association, admissible where an individual right exists as against unfair competition, ceases when this individual right is lacking."

⁵⁶ "With authority, with accuracy, with deliberation [these decisions] . . . affirm the reality of the collective personality. . . . This view . . . constitutes the judicial recognition of an undoubted social fact. . . . One may say that with these decisions the theory, too long dominant, of the fiction of intangible persons, the purely individualistic doctrine of corporate law, . . . has at last succumbed." Mestre, *op. cit. supra* note 52.

terms of workers personally arranging their labor contracts—sometimes through the device of unions and associations, but still without a higher authority than the individual. To other writers it is simply rank traditionalism which refuses to recognize labor unions and employers' associations as agencies of industrial government with power to make agreements which shall constitute law for individual workers and employers. Formally, the individualistic view continues to dominate legislation and judicial decision. Concessions have, however, been made which cause the other theory to express more nearly the actual state of affairs in those situations in which collective agreements are the product of strong labor and employer organizations.

The individualistic theory of collective agreements has taken a number of forms.⁵⁷ In the first place it has been contended that a collective agreement is a contract made by the individual workers and employers who are members of the groups which conclude it. They become parties to the agreement by representation.⁵⁸ Just how they are represented and by whom depends upon the particular writer's views of the legal nature of groups and associations and upon the kind of groups involved in the specific case. Behind the collective agreement and equally as important as that agreement itself lie the express or implied agreements by which the groups have been constituted. In any event, if in a given instance a collective agreement has been formed at all, either the association or the negotiators for it are thought to have contracted on behalf of the members. Hence rights and duties attach to these members as fully as if they had contracted for themselves.⁵⁹ It is scarcely necessary to point out that these rights and duties ordinarily are not identical with those that

⁵⁷ It does not seem to have been seriously denied in France, as it has in the United States (Rice; Fuchs, *op. cit. supra* note 3) that collective labor agreements have legal force. PLANIOL, *TRAITÉ ÉLÉMENTAIRE DE DROIT CIVIL*, is quoted by Capitant, note in D. 1909, II, 35, as denying that such agreements have legal sanction. In the seventh edition (1917) of the same work, however, while stating that a collective agreement is only a "declaration" by the employer, M. Planiol admits that it is a matter of discussion whether legal rights and duties flow from it. Vol. 2, § 1838.

⁵⁸ Of course a single employing concern which enters into such an agreement binds itself directly.

⁵⁹ According to one view the contract by which a union or employers' association is formed is the means by which the individual members severally bind themselves to subsequent collective agreements, to which, however, the organization itself is not even a party. According to another view the organization is invested with a fictitious intangible personality which enables it to represent its members in concluding a collective agreement but not itself to assume rights and obligations. A third view vests unions and employers' associations with full juristic personality, which enables them both to represent their members and themselves to incur rights and duties. See BRETHE, *DE LA NATURE JURIDIQUE DE LA CONVENTION COLLECTIVE DE TRAVAIL* (1921) 22-57, for a review of these theories.

spring from contracts of employment, for collective labor agreements seldom purport to create actual labor contracts.⁶⁰ They simply lay down terms and conditions to which the parties are bound to make their future labor contracts conform.

Without the aid of legislation to breathe life into the foregoing theory, it is difficult to support in any of its forms. Members of labor unions and employers' associations seldom agree in fact to be bound by collective agreements which these organizations may conclude, and often there are vigorous objections within an association to an agreement which it has made. How then is it possible to hold that such persons are bound by the agreement?⁶¹ Some writers, faced with this objection, have concluded that collective labor agreements are contracts which unions and employers' associations make for the benefit of their members but not as their representatives. Thus the members would not be parties to these agreements but might sue upon them.⁶² The obvious weakness of this theory is that while it accounts for individual rights under a collective agreement it does not explain individual duties, for there is no provision in it for binding a person by a contract which he has neither authorized nor ratified.⁶³

A considerable group of writers, driven either by the inadequacy of these individualistic contractual theories or by a predisposition in favor of compulsory collective control of employment relations, have constructed a regulatory theory. This theory accords such agreements a legal power of control which is not dependent upon the will of affected individuals. In various other connections, for reasons of policy, individuals have been subjected to the collective control of their fellows, organized for that purpose.⁶⁴ Why not, therefore, workers and employers?

⁶⁰ See, however, *infra* p. 1018.

⁶¹ One explanation is based on the doctrine of *gestion d'affaires*, incorporated in §§ 1372-1375 of the CIVIL CODE, whereby a volunteer may bind a principal for whom he undertakes to act. BRETHER, *op. cit. supra* note 59, at 28-29. It is, however, highly doubtful whether a principal can be bound over his opposition. In any event the doctrine of *gestion d'affaires* was devised primarily for the protection of property and business from involuntary neglect by their owners, and it is stretching it almost beyond recognition to apply it to a union which purports to be contracting on behalf of its members. 23 CARPENTIER ET DU SAINT, RÉPERTOIRE GÉNÉRALE ALPHABÉTIQUE DU DROIT FRANÇAIS (1900) 297.

⁶² CIVIL CODE, § 1121; 2 PLANIOL, *op. cit. supra* note 57, § 1209 *et seq.*; BRETHER, *op. cit. supra* note 59, at 30-38.

⁶³ Compare Rice, *op. cit. supra* note 3, at 595.

⁶⁴ 2 PLANIOL, *op. cit. supra* note 57, § 946. There are a number of instances in American law. Thus the creditors of a bankrupt meet to consider their common interests and act by vote of a majority in number and amount. 11 U. S. C. §§ 91, 92 (1926). In this way they may accept a composition which, if the judge approves, will bind dissenting creditors. *Id.*, § 30. Frequent efforts have also been made to give legislative power over

M. Jean Brethe, in his study of the legal nature of collective labor agreements,⁶⁵ credits the inspiration of these regulatory theories to two sources: first, M. Paul-Boncour's thesis⁶⁶ that labor unions and employers' associations must of necessity exercise coercive authority over individual competitors, and second, M. Leon Duguit's recognition of a type of juristic act which is binding upon individuals but which is neither official nor contractual in its nature.⁶⁷ Given the economic necessity and the legal device appropriate to meeting it, one can easily construct the solution. The formation of a collective agreement becomes, as it were, an act of private legislation applicable at least to the members of the groups which enact it and perhaps to others as well.⁶⁸ For the most part its provisions become operative only when the workers and employers to whom it applies enter into employment relations. The employment, though not its terms, remains a matter of individual choice.⁶⁹

In all of the foregoing theories, both individualistic and regulatory, the fixing of wages and working conditions by collective agreement⁷⁰ is, primarily, the phenomenon whose explanation is sought. Much less difficulty has been experienced in finding a foundation for whatever rights and duties such an agreement may attach⁷¹ to the organizations that enter into it.⁷² Obviously

building restrictions to property owners in affected areas. McBain, *Law Making by Property Owners* (1921) 36 POL. SCI. QUAR. 617; *State v. Roberge*, 278 U. S. 116, 49 Sup. Ct. 50 (1928).

⁶⁵ *Op. cit. supra* note 59, at 57-84.

⁶⁶ LES RAPPORTS DE L'INDIVIDU ET DES GROUPEMENTS PROFESSIONNELS (1900).

⁶⁷ Fuchs, *op. cit. supra* note 3, at 31-32; Fuchs, *op. cit. supra* note 4, at 11; Duguit, *Collective Acts as Distinguished from Contracts* (1918) 27 YALE L. J. 753; 1 DUGUIT, *TRAITÉ DE DROIT CONSTITUTIONNEL* (3d ed. 1927) 411-413.

⁶⁸ See *infra* under IV, c.

⁶⁹ Legislation is necessary, according to all ordinary views of the separation of powers, to authorize the courts to recognize the binding effect of this new species of juristic act and thus to give effect to the regulatory theory. It is precisely that which has taken place in Germany. Fuchs, *op. cit. supra* note 4, at 9-11.

⁷⁰ *I. e.*, in German terms, the effect of the *normative* provisions of such agreements, *id.* at 11.

⁷¹ By virtue of what the Germans call *obligatory* provisions. *Ibid.*

⁷² The most extreme individualist theorists refuse to recognize these organizations as the subjects of any rights or duties. This view is correct where an agreement is negotiated by an informal committee. The Act of 1920, however, vests registered associations with broad capacity to sue and be sued. Compare *infra* p. 1024. As to them the matter becomes simply a question of the scope of this capacity and of the words by which it is explained. BRETHER, *op. cit. supra* note 59, at 48. At least one writer at the opposite pole has likewise denied that the organizations which form a collective agreement can be sued upon it, on the ground that they are invested with virtually sovereign powers and do not subject themselves to obligations. *Id.* at 72, setting forth the theory of M. Pirou.

these organizations bind themselves to each other directly, whether the tie be regarded as contractual or not. Thus it has been said that the obligations arising out of a collective agreement "are manifested in a double classification or, if one wishes, in two successive stages. There are the immediate obligations, which proceed directly from the collective agreement, and there are the eventual obligations, which only appear after an individual labor contract has been concluded by parties subject to the collective agreement."⁷³

III. *Collective Agreements in Judicial Decisions and in Legislation*

The French courts prior to the Act of March 25, 1919 proceeded upon a theory of collective labor agreements which may be stated as follows: (1) a labor union and an employers' association contract on their own behalf and become subject to such obligations as the agreement expressly or impliedly imposes upon them; (2) individual employers and workers, members of the contracting associations, usually become parties to the agreement through representation and are obligated to arrange their contracts of employment in accordance with it; (3) in the event of a variance between these contracts of employment and the collective agreement the former and not the latter are controlling. The Act has not modified the first two propositions except in matters of detail; but it has completely reversed the third proposition, thereby greatly strengthening collective control.

A. *Obligations of the Contracting Parties*

To substantiate the first point, relating to the duties of the contracting associations, it is necessary to resort to inference for the period prior to 1919, for no decisions bearing directly upon the point were reported. In one case, a suit for damages against a local building trades federation on account of a strike which was alleged to have been in violation of a collective agreement, the question was raised but not decided. The court of first instance assessed damages of one franc, but the court of appeals gave judgment for the defendant upon the ground that certain predecessor unions and not the defendant had entered into the agreement.⁷⁴ In a leading case it is stated *obiter* that in entering into a collective agreement a union "stipulates and promises for

⁷³ Louis-Lucas, *Les conventions collectives de travail* (1919) 18 REV. TRIMESTRIELLE DE DROIT CIVIL 80. See also BRETHER, *op. cit. supra* note 59, at 82, where the writer, who supports the regulatory theory in other respects, recognizes that there may be "supplementary" contractual obligations on the part of the negotiators of a collective agreement, such as that of furthering the adoption of the prescribed terms of employment.

⁷⁴ Chambéry Oct. 4, 1910, D. 1911, II, 187.

itself,"⁷⁵ and in another decision that an association may be bound by such an agreement when its members are not.⁷⁶ The Act of March 25, 1919 appears to be confirming preexisting law when it prescribes that "groups of employees or employers bound by a collective labor agreement are obligated to do nothing which would be of a nature to endanger its execution in good faith."⁷⁷ One writer has pointed out that this provision is in effect an application of section 134 of the Civil Code, in which it is laid down that "Contracts lawfully entered into have the force of law for those who have made them" and that "They must be carried out in good faith."⁷⁸ After the passage of the Act a plasterers' union which called a strike ten days before the expiration of a collective agreement was required to pay 100 francs to the injured employers' association.⁷⁹ It is specifically provided in the Act that the organizations which form a collective agreement do not guarantee its execution by their members unless a stipulation to that effect is included.⁸⁰

B. *The Mode of Binding Individuals*

The fact that when a collective agreement is concluded the members of the contracting associations are bound as principals under the law of agency raises two questions of importance. The first is whether they are bound by any obligations that are not conditioned upon the conclusion of actual contracts of employment.⁸¹ No theoretical objection appears. In a number of cases where collective agreements purported to create such obligations they were enforced. Thus where a strike was terminated by a collective agreement negotiated by associations on each side, whereby the employers promised to take back the strikers, an employer who failed to do so was held liable in damages to the injured employees.⁸²

⁷⁵ Paris Feb. 6, 1911, *infra* note 84.

⁷⁶ Lyon Mar. 10, 1908, *infra* note 106.

⁷⁷ LABOR CODE, bk. I, § 31s.

⁷⁸ Louis-Lucas, *op. cit. supra* note 73, at 80.

⁷⁹ Trib. de Mulhouse Jun. 28, 1923, D. 1925, II, 1. The suit was for 10,000 francs.

⁸⁰ LABOR CODE, bk. I, § 31s. The German courts have held to the same effect. Fuchs, *op. cit. supra* note 4, at 8, n. 22.

⁸¹ Under the German law no such obligations are recognized. The normative effect of collective agreements is limited to actual employment relations. Fuchs, *op. cit. supra* note 4, at 13, 17, 43.

⁸² Cass. Civ. Nov. 24, 1914, S. 1916, I, 99. To the same effect is Paris Jul. 18, 1922, D. 1926, II, 101. See also Narbonne Jun. 23, 1904, referred to in the report to the Chamber of Deputies upon the bill which later became the ACT of 1919, JOURNAL OFFICIEL, DOCUMENTS PARLEMENTAIRES; 10th Legis., Reg. sess., Jan.-May, 1913, at 382. In this case, however, the defendant had entered into the collective agreement directly through her foreman. It is settled in France that workers who strike terminate their employ-

The second question is whether in a particular case the employers and workers have in fact been represented by the persons who negotiated the collective agreement. Prior to the Act of 1919 there were no settled criteria for determining this question. Where an affirmative conclusion was reached it seems often to have been assumed rather than consciously arrived at on the basis of the facts in the case. The matter was explicitly considered by the Court of Cassation in a case in which a suit for wages was brought by two stonemasons. The plaintiffs claimed according to a collective agreement which had been concluded between their union and an employers' association of which the defendant was a member. The defendant maintained that he was not bound by the agreement, against which he had protested from the beginning. The lower court found that the defendant had remained a member of the employers' association after the agreement had been regularly entered into and that there was no express stipulation between him and the plaintiffs for any other than the prescribed wages. Accordingly it rendered judgment for the plaintiffs, which was affirmed.⁸³ It is difficult to support this decision upon principles of agency unless the constitution of the employers' association explicitly bound the members to future collective agreements. There was no finding to this effect. In a subsequent case in a lower court, where a finding was made that the constitution of an employers' association did not authorize it to bind its members by collective agreements, certain of the latter, made defendants in an action by a union, were held not to be bound by the association's agreement with the union.⁸⁴

The Act of March 25, 1919 enacts substantially the points decided by the Court of Cassation in 1910. The Act of 1884 relating to economic associations had guaranteed the right of individual members to withdraw at any time, subject to their current obligation to pay dues.⁸⁵ The Act of 1919 provides that a collec-

ments. Hence in neither of the above cases were there labor contracts to which the defendants' obligations could be said to attach. In Germany the principal case would have been decided the other way. Fuchs, *op. cit. supra* note 4, at 19-21. Whether a strike ought to be held to terminate the strikers' employment is a matter of dispute among writers. See the note by M. Paul Pic, D. 1909, II, 121, and authorities cited.

⁸³ Cass. Civ. Jul. 7, 1910, D. 1911, I, 201, S. 1912, I, 206. Narbonne Mar. 2, 1909, referred to in the report to the Chamber of Deputies, *supra* note 82, comes to the same conclusion.

⁸⁴ Paris Feb. 6, 1911, D. 1912, II, 289. If the terms of a collective agreement are sufficiently generally followed to make them a usage, they may, of course, bind even non-members of the organizations which framed them unless these individuals take care to stipulate to the contrary. Juge de paix de Narbonne Nov. 11, 1905, rep. to the Chamber of Deputies, *supra* note 82, at 383.

⁸⁵ The provision, as amended by the ACT OF MAR. 12, 1920, is now LABOR CODE, bk. III, § 8.

tive labor agreement must be written and deposited with certain *conseils de prud'hommes*⁸⁶ or justices of the peace, according to the agreement's geographical scope, before it can go into effect. From that day forth it binds all parties who have signed it personally or by agent authorized thereto in writing. It also binds those members of the signatory organizations who do not resign and give public notice of their resignations within eight days.⁸⁷ Members who join subsequently are likewise bound.⁸⁸ Agreements may be of indefinite duration, subject to the withdrawal of any signatory party upon one month's notice,⁸⁹ or they may be of fixed duration.⁹⁰ The latter bind the members of the signatory organizations for the specified period only where they have given written authorizations or subsequent written adhesions.⁹¹ In all other instances of collective agreements for definite or for indefinite periods a member of a signatory organization may resign from it and withdraw from the agreement upon one month's public notice.⁹² Thus the fact of membership in a contracting labor or employers' organization draws with it the legal consequence of participation in a collective agreement which the organization has concluded, subject only to withdrawal in the prescribed manner. Many troublesome questions of agency are eliminated by this legislative declaration. One is perhaps justified in assuming that a strong union or employers' association will find ways to prevent withdrawals of so formal a character. Hence in effect, it is more difficult than before for the members of such an organization to resist being controlled by the collective agreements into which it enters.

Questions regarding the authority of organizations to enter into collective agreements cannot, however, be entirely abolished by legislative fiat, nor has so bold an attempt been made. The difficulties which remain are increased by the continued recognition of informal, temporary groups and committees as proper parties to collective labor agreements.⁹³ Of necessity, therefore,

⁸⁶ The *conseils de prud'hommes* are small-claims labor courts, established by statute. See *infra* p. 1025.

⁸⁷ The period allowed for resignations is limited to three days in the case of an agreement which terminates a strike or lockout.

⁸⁸ LABOR CODE, bk. I, §§ 31c, 31k.

⁸⁹ *Id.* §§ 31e, 31f, 31m.

⁹⁰ *Id.* § 31e. The specified period may not be greater than five years. *Id.* § 31g.

⁹¹ *Id.* § 31l.

⁹² *Id.* § 31n.

⁹³ LABOR CODE, bk. I, § 31, defines the collective labor agreement as a "contract relative to conditions of work, concluded between, on the one hand, the representatives of a trade union or any group of employees and, on the other hand, the representatives of a trade association or any other group of employers or several employers contracting in their own names or even a single employer."

it remains to be determined in each case whether the association or group is authorized to conclude this sort of contract. If it is, its members are subject to the foregoing provisions of the Act of 1919; if not, there cannot be a collective agreement at all. The statute recognizes several ways in which an association or group may be empowered to conclude a collective labor agreement. These are: by provision in its constitution or by-laws, by special authorization of a meeting of the group, or by written authorization from all of its members individually. An agreement already concluded may, also, be ratified by a meeting of the group. No procedural safeguards are laid down. On the contrary, "The groups themselves determine their mode of deliberation."⁹⁴ It is largely on this account, no doubt, that the Court of Cassation has refused to uphold judgments of the lower courts against individuals upon collective agreements, unless accompanied in each instance by a specific finding that the defendant was bound by the agreement in the manner laid down in the statute.⁹⁵

C. The Effect of Variant Individual Contracts

Prior to the Act of 1919 the terms of a collective labor agreement applicable to an individual contract of employment might be superseded by conflicting provisions in the individual contract itself. The employer or employee, however, who thus derogated from the authority of the agreement, became liable in damages to the other parties to it. The situation was neatly illustrated by two companion cases. In one, a worker sued for wages according to the rate laid down in a collective agreement. He had been a member of the union at the time the agreement was concluded but had resigned upon accepting employment at a lower scale. The lower wage had been paid him. The defendant remained a member of the employers' association with which the agreement had been concluded. A judgment for the defendant was affirmed by the Court of Cassation upon the ground that, even assuming the plaintiff's employment to have been subject to the collective agreement, he was bound by his individual contract.⁹⁶ In the other case the same defendant was sued by the union for damages on account of his cutting of wages. He admitted the facts but pleaded his inability to pay more and the desire of the workers

⁹⁴ *Id.* § 31b.

⁹⁵ Cass. Civ. Feb. 11, 1920, D. 1920, I, 111; Jan. 5, 1921, S. 1921, I, 367; Jun. 30, 1925, Bull. Cass. Civ. 1925, at 234; Feb. 11, 1929, S. 1929, I, 208. In a decision of Jun. 21, 1927, Bull. Cass. Civ. 1927, at 198, it was held that seventeen months' acceptance by certain employers of the terms of a collective agreement which had been voluntarily concluded in their behalf by a single employer in settlement of a strike, could not bind them under the statute.

⁹⁶ Cass. Civ. Dec. 16, 1908, S. 1912, I, 201; Cass. Civ. Aug. 2, 1911, D. 1912, I, 76, S. 1912, I, 201, is to the same effect.

to accept reduced incomes rather than none at all. The Nimes Court of Commerce refused to consider the ethics of the defendant's conduct and assessed fifty francs damages against him on account of his violation of the collective agreement.⁹⁷

In reversing the doctrine of the Court of Cassation in the former of the two foregoing cases the legislature of 1919 made its most radical advance in the direction of collectivism. Having safeguarded the formal right of the individual to escape from the control of a collective labor agreement, it proceeded to subject him to that control if he failed to employ the designated mode of withdrawal. For: "When a contract intervenes between an employee and an employer who should . . . be considered as subject, respectively, to the obligations resulting from the collective labor agreement, the rules established by this agreement, notwithstanding any stipulation to the contrary, apply to the relations established by the foregoing labor contract."⁹⁸ The statute, furthermore, establishes a presumption that where only one of the parties to a labor contract is bound by a collective agreement the terms of the agreement are embodied in the individual contract.⁹⁹

The former of these two provisions does not seem to have been explicitly applied in an appellate case, but its meaning is not in doubt. In a court of first instance, recovery of wages according to a collective agreement has been allowed notwithstanding an express contract for lower pay.¹⁰⁰ The second provision has been held inoperative to alter the pre-existing terms of employment of a worker whose union has concluded a collective agreement with other employers than his own. The statutory presumption, in other words, does not overcome the effect of a previous course of dealing.¹⁰¹

D. Enforcement by Civil Action

It was settled prior to the Act of 1919 that both individuals and groups who were parties to collective labor agreements might sue to enforce them, each according to his or its own interest. The question of when a union or an employers' association might sue was, of course, affected by the extent of the recognition of collective interests in tort actions, which is discussed above. A conservative decision of the Court of Cassation in 1893 no doubt discouraged organizations from bringing actions. In the case in question a textile operator was sued by a union of workers

⁹⁷ Nimes Trib. de Com. Aug. 7, 1907, S. 1912, I, 201.

⁹⁸ LABOR CODE, bk. I, § 31p.

⁹⁹ *Id.* § 31r.

¹⁰⁰ Seine, Cons. de Prud'hommes, Nov. 13, 1920, BULL. MIN. DU TRAV., 1921, at 81.

¹⁰¹ Cass. Civ. Mar. 7, 1921, S. 1923, I, 30.

for alleged violation of the wage and hours provisions of a collective agreement. The union's right to bring the action was denied, upon the ground that the lower court had found that only the union's members, through its officers as agents, and not the union itself had become parties to the agreement, and that the union had not itself been damaged by the defendant's acts.¹⁰² It is doubtful whether the lower court intended its language to be construed as a finding that the union had not contracted on its own behalf; and its statement as to the incidence of the damage was a mere conclusion. Subsequent commentators pointed out that the decision of the Court of Cassation was to be taken in relation to the supposed facts and predicted freely that in another case the Court would sustain a union's right to sue for a similar breach of a collective agreement.¹⁰³

Meanwhile some of the lower courts ignored the decision of the Court of Cassation. In one case the right of a union to sue a wage-cutting employer upon a collective agreement made with it was upheld almost without discussion and damages for the injury to the union's interests were allowed.¹⁰⁴ In another instance 1000 francs were awarded to a union against an employer who in violation of a collective agreement cut wages, required excess hours of labor, and discharged employees because of their membership in the union. The court said:

"The union had a material and moral interest in the execution of the contract; . . . the moral interest is undeniable; . . . the material damage results from the inevitable difficulty of recruiting or retaining members if the employers can with impunity render naught the efforts put forth by the union to ameliorate the condition of the worker."¹⁰⁵

In a third case¹⁰⁶ a union of traction employees sued to enforce specifically¹⁰⁷ a collective agreement which had been abrogated by the company with which it was made. The agreement contained provisions for rest days and vacations, whose operation

¹⁰² Cass. Civ. Feb. 1, 1893, D. 1893, I, 241, S. 1896, I, 329.

¹⁰³ Capitant, note in D. 1909, II, 33; Wahl, note in S. 1912, I, 201; *rep.* to Chamber of Deputies, *supra* note 82, at 396.

¹⁰⁴ Nîmes Trib. de Com., *supra* note 97.

¹⁰⁵ Beauvais Mar. 29, 1912, D. 1912, II, 294.

¹⁰⁶ Lyon Mar. 10, 1908, D. 1909, II, 33, S. 1910, II, 49.

¹⁰⁷ Although most of the actions upon collective labor agreements have been for damages (compare the similar situation in Germany, Fuchs, *op. cit. supra* note 4, at 26, n. 68), there is no doubt of the availability of specific performance, enforced by a pecuniary penalty for continued refusal. 2 PLANIOL, *op. cit. supra* note 57, at 71-74. In the case in question the court of first instance ordered the company to abide by the agreement upon pain of paying 100 francs a day—a remedy which seems far more effective than those usually employed.

was disturbed by the Weekly-Day-of-Rest Act of July 13, 1906.¹⁰⁸ The main question in the case related to the revocability of the agreement under the circumstances. While deciding largely against the workers upon this point, the court of appeals was at pains to justify the union's right to bring the action. On appeal by the union to the Court of Cassation the question of the union's right to prosecute the suit was not raised.¹⁰⁹

The problem which thus troubled the courts and the writers has largely been eliminated by the Collective Agreement Act of 1919, which provides:

"Groups having capacity to sue, which are parties to a collective labor agreement, may bring actions arising out of the agreement in favor of their several members without having to present an express authorization from the party concerned, provided the latter has been advised and has not declared himself opposed [to the action]. The party concerned may always intervene in the suit commenced by the group."¹¹⁰

Thus the power of labor unions and employers' associations to assert in court the individual and collective interests of the workers and employers under a collective agreement is completed.

The attempt of a miners' union under this provision of the statute to collect 40,000 francs back pay for its members, which the defendant was alleged to have withheld in violation of a collective agreement with the plaintiff, was frustrated because the agreement had not been filed in accordance with the Act. The Court of Cassation, however, upheld the union's right to sue. It declared further that it was unnecessary for the union to name the precise parties on whose behalf it was bringing the action, whose identity might just as well be determined later by a commissioner appointed by the trial court. It held, moreover, that a meeting of the union, at which its officers were authorized to institute the action, gave sufficient notice to all of its members to satisfy the requirements of the statute.¹¹¹

In another case of the same general nature the action of a union was defeated by the highly questionable device of a court of first instance. A ship-builders' union sued an employer in behalf of its members and in its own behalf on account of wage cutting which clearly violated a collective agreement. The reduction in pay had been accepted by the defendant's employees in a meeting called for the purpose, as the only means of securing

¹⁰⁸ Now incorporated, as subsequently modified, in LABOR CODE, bk. II, §§ 30-50b.

¹⁰⁹ Cass. Req. Jul. 26, 1909, S. 1910, I, 71.

¹¹⁰ LABOR CODE, bk. I, § 31v.

¹¹¹ Cass. Civ. May 1, 1923, D. 1923, I, 66, S. 1923, I, 372.

employment after a two-months' layoff. The court conceded the union's right to recover for its own damage but held that the members in whose behalf it pretended to sue had waived their rights of action, which could no more be exercised for them than they could exercise them themselves.¹¹² It does not appear how many of the defendant's employees attended the meeting at which the alleged waiver took place or how many voted to accept the reduction in pay. Thus, in effect, the action of an inchoate body of workers was seized upon to remove virtually all legal sanction from an agreement which, under the statute, remained in full force and superseded conflicting individual contracts of employment. The damage suffered by the union was fixed at one franc, for which judgment was solemnly rendered.¹¹³

The system of remedies, with which the Act of 1919 supports collective labor agreements, is rounded out by certain rights of intervention in pending suits which the statute accords as follows:

"When an action arising out of a collective labor agreement is commenced, whether by an individual or by a group, the other groups having capacity to appear in court, whose members are bound by the agreement, may at any time intervene in the pending action on account of the collective interest which the decision of the case has for their members."¹¹⁴

It is the ordinary civil courts, as is apparent from the foregoing cases, which have jurisdiction of actions brought upon collective labor agreements. These consist of the justice of the peace for petty cases, the departmental tribunals of first instance, the district courts of appeal, and the Court of Cassation.¹¹⁵ For cases involving individual contracts of employment, however, the justices of the peace and ordinary tribunals are supplanted in many localities by *conseils de prud'hommes*, or councils of experts, composed of equal numbers of employers and employees. These are chosen by vote of the employers and employees respectively, in accordance with a procedure laid down by statute¹¹⁶ and by supplementary administrative decrees. Their decisions

¹¹² It seems unnecessary to burden the text by demonstrating that ordinarily, since the adoption of the ACT OF 1919, an employee may resort to court to enforce his contract of employment according to its terms as laid down in an applicable collective agreement. It has been noted that the statute declares these terms to be binding (text *supra* note 98). This view was followed by the Court of Cassation in Cass. Civ. Feb. 15, 1921, S. 1921, I, 368.

¹¹³ Trib. Civ. de St. Nazaire Jul. 21, 1922, D. 1925, II, 1.

¹¹⁴ LABOR CODE, bk. I, § 31v.

¹¹⁵ The system is described in Perroud, *op. cit. supra* note 48, at 1. Occasionally a court of commerce obtains jurisdiction of a collective agreement case. *Supra* note 104.

¹¹⁶ LABOR CODE, bk. IV.

are subject to appeal, as are those of the justices of the peace, in cases involving 1000 francs or more. It is settled that where a dispute involves a collective agreement and not primarily the individual contracts of employment formed under it, the *conseils de prud'hommes* have no jurisdiction. Thus, the action of a civil tribunal in reversing the judgment of a *conseil de prud'hommes* for lack of jurisdiction was affirmed by the Court of Cassation in a suit by a union to compel the observance of a pay increase alleged to have been provided in a collective agreement between the plaintiff and the defendant. The union, although it asked for damages as well as specific performance, was regarded by the court as proceeding primarily in its own behalf.¹¹⁷

IV. *Collective Agreements and Compulsory Control of Employment Relations*

It has been pointed out in the foregoing pages of this study that the courts and the legislature of France have continued to regard individual freedom of contract as basic in the entire system of labor law. They have refused to subscribe to the theory which would conclusively subject individual labor contracts to regulation through agreement between unions and employers' associations. They have, on the contrary, been careful to provide a procedure whereby the single employer or worker may manifest his independence of an arrangement so arrived at. At the same time collective control through agreement has in fact been strengthened by the introduction into the law of a number of aids. These are: (1) the establishment of membership in a group of workers or employers having collective bargaining for one of its purposes as tentatively sufficient to bind the individual by a collective agreement which the group may conclude; (2) the legal determination of the terms of individual labor contracts by applicable collective agreements; and (3) the recognition of the power of unions and employers' associations to represent in court the interests, under such an agreement, of their members as well as of themselves. These aids are probably sufficient in a strongly organized trade or industry to subject individual labor contracts quite thoroughly to control by collective agreement.

It has been noted, however, that French unionism on the whole has not been strong but weak, with only partial and unstable organization. An important problem, therefore, has continued to be competition between the organized and the unorganized, with the attendant necessity of guarding against deterioration in labor standards and of preventing defections from the unions through the pressure of economic necessity. The fighting weapons of unionism have at best, as has been mentioned, an uncertain

¹¹⁷ Cass. Civ. Jan. 4, 1928, D. H. 1928, p. 152, S. 1928, I, 86.

legal status.¹¹⁸ Therefore measures have at times been attempted to safeguard by legal means such control as has been established through collective agreement. Three types of reinforcement are possible in addition to the ordinary judicial remedies already discussed. These are (1) the establishment of special adjustment or enforcement agencies; (2) the barring of outsiders from employment through provisions for exclusive dealing, such as a union, or "closed," shop clause in a collective agreement; and (3) the administrative interposition of the state in support of regulations laid down by collective agreement.

A. Conciliation and Arbitration under Collective Agreements

Prior to the Act of 1919 it pretty clearly was illegal for a union and an employers' association to set up an agency for the compulsory adjustment of future labor disputes.¹¹⁹ The only reported case involving the point is inconclusive,¹²⁰ but the Code of Civil Procedure¹²¹ invalidates any arbitration agreement which does not specify the exact matter in dispute and the names of the arbitrators, thus making it impossible to provide for the adjustment of future controversies by other means than through the courts. An Act of December 27, 1892¹²² provides machinery for voluntary conciliation and, if settlement of the difficulty does not result, voluntary arbitration of collective labor disputes under the aegis of a justice of the peace. But this machinery exists only for specific controversies and cannot be used as a permanent agency for the maintenance of collective control of employment relations.

The Act of 1919, however, provides that a collective labor agreement may include a clause for the submission of all or a portion of the disputes arising out of the agreement to parties designated in the agreement, or to be designated in the manner prescribed therein; and such a clause is declared valid.¹²³ No cases involving this provision seem to have been reported, but advantage has frequently been taken of it in collective agreements. Prior to 1926 the conclusion of 138 agreements contain-

¹¹⁸ An attempt has been made by RAYNAUD, *LE CONTRAT COLLECTIF EN FRANCE* (1921) 243-256, to classify definitely the measures which labor unions and employers' associations may take in their efforts to enforce or to extend collective agreements by bringing economic pressure to bear. The cases which he cites are pertinent to the problem, but their net effect can by no means be precisely catalogued.

¹¹⁹ *Id.* at 231; OUALID ET PICQUENARD, *op. cit. supra* note 20, at 313.

¹²⁰ Cass. Req. Jan. 25, 1905, *supra* note 42. It is not certain whether the court viewed the conciliation clause there in question as compulsory or voluntary.

¹²¹ § 1006.

¹²² LABCR CODE, bk. IV, §§ 104-118.

¹²³ *Id.* bk. I, § 31x.

ing such clauses was reported,¹²⁴ and thirteen more were recorded in 1926 and 1927.¹²⁵ It is reasonable to suppose that these agreements were effected in the better-organized industries. Although collective labor agreements cannot be made for longer fixed periods than five years, they can be allowed to remain in force indefinitely. With the aid of machinery for the settlement of difficulties and perhaps for the adjustment of wages to meet changing conditions, it is more probable than it would be otherwise that collective agreements can be erected into permanent bases of control with sufficient strength and flexibility to overcome outside competition.

B. "Closed" Shop Agreements

Reported cases which pass upon "closed" shop agreements are too few to furnish the basis of an appraisal of the operation of French law in this matter. It is clear, as might have been expected, that the predictability of decisions is at a minimum. When the question did arise in the Court of Cassation the suit was not brought to enforce the "closed" shop clause, but was a tort action against a union, brought by discharged members of a rival organization. Their grievance was that the "closed" shop clause in the defendant's agreement with their employer had been carried out upon the union's insistence. In such a suit motives enter in, as in other instances of economic coercion; the absolute, mutually exclusive principles of individualism and collectivism are involved;¹²⁶ and economic facts, which vary from case to case, cannot be excluded from consideration. In the case in question the agreement which established the "closed" shop applied to the building industry of Halluin and was to endure for six years. The Court of Cassation was supplied with no finding by the lower court that either the motives or the methods of the defendant were improper. It applied the rule of thumb that the monopoly established by the agreement, being limited as to both time and place, was lawful. Consequently a judgment in favor of the defendant was affirmed.¹²⁷

It may be deduced from the court's reasoning that a "closed" shop agreement becomes illegal whenever it controls a sufficient

¹²⁴ OUALID ET PICQUENARD, *op. cit. supra* note 20, at 495.

¹²⁵ BULL. MIN. DU TRAV. (1927) 277; *id.* (1928) at 158.

¹²⁶ Compare *infra* pp. 1010-1011. The Court of Appeals of Douai, from which the instant case was appealed, noted "that freedom of labor and the right of the worker to join or not to join a union are ultimately to be recognized, and that the courts are explicitly charged with the duty of assuring their maintenance," but also "that it is nevertheless true that these privileges, however sacred, are necessarily limited by the principle of the freedom to form agreements, provided these are not contrary to public order or morals." Quoted in RAYNAUD, *op. cit. supra* note 118, at 224.

¹²⁷ Cass. Civ. Oct. 24, 1916, D. 1916, I, 246, S. 1920, I, 17.

area of competition to be really effective in maintaining standards. Nor is it likely that the law's abhorrence of monopoly will be greatly relaxed so long as unions and employers' associations are largely unregulated and hence free, except when controlled by civil action, to exclude members and to govern their internal affairs as they choose.¹²⁸ And if this were not so, it would still be true that effective exclusion of non-union competition by "closed" shop agreements would be impossible in most of the industry and commerce of France because of the partial scope of French unionism.

C. Extension by Official Action of Control by Collective Agreement

The problem of overcoming harmful competition with the control established by collective agreement, then, is largely a problem in France of extending that control rather than of protecting a regulatory power which is adequate even for the time being. To this problem the question of the legality of the fighting devices of unions and employers' associations is directly pertinent. That question is shrouded in uncertainty, as has been noted; and it is likely to remain uncertain for the same reasons that success itself is of doubtful legality—the lack of guaranties, namely, that a favorable economic position will not be exploited for unsocial ends. At least a formal guaranty to this effect can be supplied, however, if the extension of the partial control achieved by a collective agreement is made to depend upon a governmental decree; for the official entrusted with the function of effecting the extension can be charged with the duty of acting only in cases where the general welfare will be served. A system of this sort has been in force in Germany since the war, where extensions by the Minister of Labor of the employment conditions laid down in collective agreements have been a normal feature of the control recognized and established by law.¹²⁹ In France the same idea has been gaining ground in statutes which govern specific aspects of employment.

¹²⁸ The only legal requirements for associations registered under the ACT OF MAR. 20, 1884, are that their constitutions and by-laws and the names of their officers be recorded and that the latter be French citizens. LABOR CODE, bk. III, §§ 3, 4. Moreover, the political and religious aspects of many French unions make it less possible to sustain their exercise of exclusive economic power. Bonnacase, note in S. 1920, I, 17. However, an economic association can be made to answer to an injured member for a violation of its own constitution in expelling him. Cass. Req. Mar. 15, 1910, D. 1913, V, 30. Conversely he may be sued for breach of his obligations to it, provided, of course, that these are not unlawful. Lyon Nov. 11, 1921, D. 1923, II, 150, in which participation in a lockout was held to have been the legal duty of the defendant. But see Riom, May 27, 1922, D. 1923, II, 150.

¹²⁹ Fuchs, *op. cit. supra* note 4, at 10, 16-17, 34-36.

The idea of official intervention to regulate the terms and conditions of employment gained a great deal of ground in France during the war, when stoppages of production had to be prevented at all costs. In January, 1917 strikes and lockouts were forbidden and compulsory conciliation and arbitration were instituted in establishments subject to the jurisdiction of the Minister of Armaments. Provision was also made for the extension of arbitral decrees to parties not originally subject to them.¹³⁰ This war-time regulation was, in large part, a development of the theory of the decrees of August 10, 1899, whereby labor conditions in the establishments of public contractors were subjected to control.¹³¹ In these decrees it was specified that normal current wages for the locality should be paid and that in ascertaining them the officials charged with enforcement should "refer so far as possible to agreements existing between associations of employers and workers in the locality or region."¹³² Thus a limited extension was in effect given to collective agreements.

Apparently the ordinary courts were also called upon under certain circumstances during the war to apply collective labor agreements to workers who in normal times would not have been subject to them. Thus in a case which was appealed to the Court of Cassation, the plaintiff was a member of the military forces who had been ordered to work in the defendant's factory. He sued for his pay, which the court below determined according to a collective agreement then in force in the locality but not in the defendant's plant. The court was carrying out the requirement of the Act of August 17, 1915, under which the plaintiff had been assigned, which called for the payment of wages at prevailing rates. The judgment was affirmed.¹³³

After the war a number of enactments for the improvement of labor conditions made use of the same device of relying upon collective agreements for the guidance of administrative officials. The Act of April 23, 1919 established the principle of the eight-hour day, leaving its application to industries and trades throughout the country to be effected by administrative decrees. "These decrees shall have reference to agreements, wherever they exist, between national or regional organizations of interested employers or workers."¹³⁴ The application of the eight-hour day is not yet complete, but it is steadily being extended.¹³⁵ A num-

¹³⁰ SCELLE, *PRECIS ÉLÉMENTAIRE DE LEGISLATION INDUSTRIELLE* (1927) 84; OUALID ET PICQUENARD, *op. cit. supra* note 20, at 34-40.

¹³¹ OUALID ET PICQUENARD, *op. cit. supra* note 20, at 35; INT. LAB. OFF., *op. cit. supra* note 17, at 164.

¹³² BULLETIN DES LOIS, v. 374, at 2155, 2157, 2159.

¹³³ Cass. Civ. Feb. 22, 1921, S. 1922, I, 14.

¹³⁴ LABOR CODE, bk. II. § 7.

¹³⁵ Not without some departure from the spirit of the law, however, such as that involved in the decree of Sep. 14, 1922, which lengthened the hours

ber of national agreements for applying its provisions were framed almost at once¹³⁶ and by 1924 thirty decrees had sanctioned pre-existing agreements for carrying out the law, applying them to 5,000,000 workers.¹³⁷ Not all decrees, of course, even in cases where collective agreements exist, accept their provisions without change; for it is settled that the administrative authorities are vested with ultimate discretion in the matter.¹³⁸

In even more thoroughgoing fashion the amendment of December 29, 1923 to the Weekly Day-of-Rest Act of July 13, 1906 places an official sanction behind certain collective labor agreements. The original Act authorized the prefects of departments to adjust the law to industries and trades in which the simple Sunday holiday was impracticable and required them in doing so to consult affected unions and employers' associations.¹³⁹ The amendment authorized these same officials, in any case in which the unions and employers' associations in a trade or industry formed an agreement regarding a uniform day of rest, to order the closing of all similar establishments in the affected region in accordance with the agreement.¹⁴⁰ The prefect, presumably, may refuse a decree when it would not be in the public interest to grant one; but if he acts, he extends the agreement unmodified to persons who are not parties to it. Its violation then becomes an offense against the Act. In no other way, of course, could associations that do not include an entire trade effect the advance which the statute is designed to further. The legislature has responded by authorizing a sanction that shuts out subversive competition. Occasional innovations of a positive nature have been introduced by means of the foregoing procedure. Thus the closing of pharmacies on Sundays has been accompanied by the provision of emergency prescription service, sanctioned by official decree.¹⁴¹

A further step, involving the sanctioning of collective agreements even without official decrees to support them, may have been taken in the Act of July 19, 1928, relating to dismissal of

on duty, if not of actual work, which might be required of railroad employees. CLARK, *op. cit. supra* note 11, at 97.

¹³⁶ OUALID ET PICQUENARD, *op. cit. supra* note 20, at 492.

¹³⁷ *Id.* at 497.

¹³⁸ Conseil d'Etat Mar. 27, 1925, Recueil des arrêts du Conseil d'Etat, 1925, at 342, sustaining as valid the decree cited *supra* note 135. The actual authority of a collective agreement is likely to be greater than that contemplated in the law. Thus it has been stated that the decree in question had already been modified so as to give "full satisfaction" to the plaintiffs whose legal attack upon it was defeated. INT. LAB. OFF., *op. cit. supra* note 17, at 167.

¹³⁹ LABOR CODE, bk. II, § 35. A similar provision was included in the eight-hour law. *Id.* § 7.

¹⁴⁰ *Id.* § 43a.

¹⁴¹ Conseil d'Etat Mar. 27, 1925, Jul. 10, 1925, Jul. 17, 1925, Arrêts, 1925, at 335, 675, 697.

workers. It is provided that dismissals of workers with less than the period of notice "determined by local and trade custom, or, failing such custom, by collective agreement" shall be actionable. "The periods fixed by custom," it is further enacted, "may be altered by collective agreement," and "any clause of an individual contract or of rules of employment fixing a period of notice shorter than that established by custom or collective agreement shall be null and void."¹⁴² It is contended that under this provision a collective agreement, even though it does not govern the parties in other respects and does not establish a custom, may be applied to a particular case of discharge.¹⁴³

In 1919, at the time of the final passage of the present Collective Agreement Act, it was proposed in the Senate that the legislature authorize the extension of collective agreements in their entirety by decree of the Minister of Labor. Although the proposal was defeated, it had strong support.¹⁴⁴

V. *Progress and Impediments*

The justification of the movement toward the determination of employment relations by collective agreement is stated in substantially the same terms by numerous students of the problem. Its purpose is to establish a just and responsible control of wages and working conditions in place of their dictation by employers. Individual freedom of contract, although perhaps adequate in its day, has under modern conditions evolved into wage scales and shop rules which employers prescribe and employees must take or leave. The essence of the labor contract, in other words, is not contractually determined. To remedy this situation collective bargaining makes use of the principle of freedom at the only point in the fixation of wages and working conditions at which freedom can operate—the point, namely, at which a determination is made of what is to be offered the worker. At that point collective bargaining seeks to place two agencies of negotiation which shall be approximately equal in strength and which can effectively represent the parties to the ultimate labor contract. The result of their dealings is embodied in a compact which, in France, the courts and the legislature have supported with a legal sanction.

The value of this sanction can hardly be judged finally from the data which have been examined for this study. From the doctrinal standpoint few adverse criticisms can be offered. A catalog of the rights and duties which originate in collective labor agreements under French law reveals no omissions. The reme-

¹⁴² LABOR CODE, bk. I, § 23.

¹⁴³ Picard, *French Legislation on the Dismissal of Workers* (1931) 23 INT. LAB. REV. 10.

¹⁴⁴ Pirou, *op. cit. supra* note 1, at 48.

dies offered are the most effective known to French procedure and they are available to any party against any other party—often by means of the cheap, informal process which the *conseils de prud'hommes* supply. If originally, in order to bind individuals to agreements which their groups had framed, the principles of agency were severely stretched, the danger of their breaking has long since been removed by legislation. If, in consequence, obligations which actually rest upon the authority of the group are commonly labelled contractual, it is only the theorist, concerned about the neatness of his categories, who need be troubled. The individualist principle of the freedom of the single employer or worker to withdraw from the control of a collective agreement and the collectivist principle of his inability to make a conflicting labor contract if he does not withdraw, represent as fair and workable a compromise as could be devised between two general views, neither of which is as yet entitled to exclusive possession of the field.

How truly the reported decisions of the French courts reflect what actually happens in the much larger number of decided cases is perhaps open to question.¹⁴⁵ French writers themselves assume that the picture is accurate, and it seems to be fairly complete as regards the appellate courts. There is, of course, no doctrine of *stare decisis* to insure the application of precedents, but the moral authority of the decisions of at least the Court of Cassation appears to be quite high.¹⁴⁶ On the other hand, even in a case itself, in which points of law are decided by the Court of Cassation on the basis of facts reported by a court of appeals, the cause is always remanded for a new trial if the judgment below is not affirmed. A slightly different view of the facts may there be taken upon the retrial, which will render the highest court's propositions of law inapplicable.¹⁴⁷ The *conseils de prud'hommes*, moreover, in which many of the cases arise, are lay tribunals. "Since they owe their positions to election, they are much less sensitive than professional judges to the censure of the Court of Cassation, and are likely to be more afraid of the censure of the trades they represent."¹⁴⁸ There have been instances in which labor candidates have secured election to the

¹⁴⁵ The reported cases are those chosen by the two leading law publishers and by a very selective official reporter of the Court of Cassation, supplemented in the field of labor law by cases included in the Bulletin of the Minister of Labor.

¹⁴⁶ Lambert, Pic and Garraud, *op. cit. supra* note 24. The writers allege that the sections of the Civil Code, which theoretically are controlling upon the courts, often serve as mere "screens" for the real bases of judicial decisions. See also STUMBERG, GUIDE TO THE LAW AND LEGAL LITERATURE OF FRANCE (1931) 19.

¹⁴⁷ Perroud, *op. cit. supra* note 48, at 10.

¹⁴⁸ Lambert, Pic and Garraud, *op. cit. supra* note 24, at 5.

conseils de prud'hommes by promising to apply collective agreements to employers who were not legally subject to them.¹⁴⁹ Nevertheless the lack of adequate legal sanction has been given as one reason for the slow spread of collective labor agreements in France before the war.¹⁵⁰ And perhaps the value of a thoroughgoing legal application of such agreements is reflected in the attitude of the General Confederation of Labor, which opposed the Act of 1919 before its passage¹⁵¹ but approved of it afterward.¹⁵² It is not unlikely, moreover, that legal sanctions occupy a larger place in popular esteem under a system which actually provides "justice for the poor"¹⁵³ than would be appreciated in a country such as the United States where the courts are virtually closed to small claimants. If so, legal theory and the actual application of law will bear a fairly close relation to each other.

In such larger matters as dealing with strikes in violation of collective agreements, there is little evidence that control through the courts plays any direct part. As has been noted, the few judgments that have been rendered have been for almost nominal amounts. As against the unions, moreover, damages often will be uncollectible; for much of the property which a union is likely to own is exempt from execution.¹⁵⁴ Strike reserves, however, may be reached. Contempt procedure to enforce injunctions or decrees of specific performance is not employed in France.¹⁵⁵

From the economic standpoint anything less than complete control of a competitive field by a collective agreement is unsatisfactory. Except in a few matters such as the eight-hour day, French law has not accorded or even attempted to encourage such control, and the problem of how it is to be attained remains for solution.¹⁵⁶ Two types of proposals have been made. The first type contemplates the general employment of official decrees to extend collective agreements to parties who otherwise would not be controlled by them.¹⁵⁷ Besides abandoning contractual fixation

¹⁴⁹ RAYNAUD, *op. cit. supra* note 118, at 253-4.

¹⁵⁰ OUALID ET PICQUENARD, *op. cit. supra* note 20, at 279.

¹⁵¹ ROUAST, *LES CONVENTIONS COLLECTIVES DE TRAVAIL ET LA LOI DU 25 MARS 1919* (1924) 58-59; rep. to Chamber of Deputies, *supra* note 82, at 439-440.

¹⁵² CLARK, *op. cit. supra* note 11, at 78.

¹⁵³ No costs or fees of any kind need be paid by the parties to litigation before the *conseils de prud'hommes*. LABOR CODE, bk. IV, § 50.

¹⁵⁴ RAYNAUD, *op. cit. supra* note 118, at 238 n. 1.

¹⁵⁵ 2 PLANIOL, *op. cit. supra* note 57, at 61.

¹⁵⁶ "In our opinion the collective agreement will not have its full value, its entire effectiveness, its full character, until the day when it binds the entire trade without any possible exception, when it will be the law of the trade." Report to the Chamber of Deputies, *supra* note 82, at 449.

¹⁵⁷ A bill to this effect, providing, however, for consultation of the affected parties, was passed by the Chamber of Deputies and considered by the Senate, together with a substitute proposition, at the same time that the

of working conditions in favor of regulation from above for those workers and employers to whom agreements are extended, this procedure might seriously weaken the unions and employers' associations by extending their chief benefits to non-members, thus encouraging the avoidance of the payment of dues and other forms of participation in their affairs. Both objections are serious. The principle of freedom, so basic in the constitutional law of France and of the United States, should not be lightly abandoned in favor of control by authority, unless that authority is directly answerable to the persons immediately concerned.¹⁵³ What is needed is an effective, socially guided expression of freedom and responsibility, rather than the supplanting of this democratic ideal or the weakening of the agencies through which it is seeking to find expression in modern industry and commerce. A system which may work well in Germany, where authority has long held sway in politics and where democratic control in industry paradoxically is more firmly established than farther to the west, may not be capable of simple transplantation elsewhere.

More hopeful is the other type of proposal for strengthening control by collective agreement, which contemplates universal organization for collective bargaining, with compulsory participation by workers and employers.¹⁵³ It raises two problems, however. The first problem grows out of the fact that the more common type of labor union and association of employers, formed for limited purposes, is not the only conceivable basis for the control of employment relations. The company union and the conduct of competing business enterprises by "collaboration"¹⁵⁹ within each establishment are also contenders for recognition, and the communist unions, organized upon a still different basis, are increasing in strength.¹⁶¹ Yet a legally prescribed form of organization would have to be based upon a choice of institutions. The other problem has to do with the conduct of whatever type of organization is selected. Procedure is of central importance in preventing usurpation of authority, graft, and oppression. It has been recognized, even by advocates of compulsory control by collective agreement, that it would be fatal to found it upon associations whose internal functioning is surrounded by no guaran-

Act of 1919 was under discussion. LAUTAUD, *LES CONVENTIONS COLLECTIVES DE TRAVAIL* (1924) 109-118.

¹⁵⁸ BRETHER, *op. cit. supra* note 59, at 146.

¹⁵⁹ *Id.* at 84, 186-187.

¹⁶⁰ *Id.* at 71-2; Tardy, *op. cit. supra* note 18, at 436-7.

¹⁶¹ Communist theory advocates the industrial or commercial establishment as the unit of workers' organization, with local and regional associations of plant committees. The C. G. T. U. is reorganizing along these lines. CLARK, *op. cit. supra* note 11, at 123-126. The ultimate purpose, of course, is not collective bargaining but complete control of production by the workers.

ties against abuse.¹⁶² Neither problem, however, is incapable of solution, and there is no alternative if chaos in employment relations is to be supplanted by orderly control on a democratic basis.

In any event it seems clear that the tendency of French development is toward an increasing use of collective labor agreements. Barring a revolution, the political state will be called upon to recognize or devise a system of control of employment relations which is adequate to modern needs and in conformity with social ideals. The courts will, as heretofore, chart and direct the mechanics of the system in its details, if not apply the ultimate forces which cause it to operate.

¹⁶² Duguit, *op. cit. supra* note 67, at 415; rep. to Chamber of Deputies, *supra* note 82, at 450. See also Morel, *Les conventions collectives de travail et la loi du 25 mars 1919* (1919) 18 REV. TRIMESTRIELLE DE DROIT CIVIL 421. M. Colson, who played a prominent part in preliminary studies which led to the COLLECTIVE AGREEMENT ACT of 1919, has recently pointed out that the unstable and divided character of French unionism makes it an unsatisfactory basis for responsible industrial control. See his *Rôle des syndicats dans les conventions et les conflits collectives de travail* (1929) 139 REV. POL. ET PARL. 18. Facts to support this view are gathered together in Tardy, *op. cit. supra* note 18.